

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-3911-01

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date:

to: Chief, Examination Division, Southern California District
Lorna Fenton, Case Manager
Ken Kusaka, Team Coordinator
LMSB 1585 Santa Ana

from: June Y. Bass, Associate Area Counsel (LMSB)
Jenny A. Moon, Attorney (LMSB)

subject: **Taxpayer:** [REDACTED]

Issue: Restricted Consent to Extend the Statute of Limitations

Years: [REDACTED] and [REDACTED]

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum is pursuant to your request for our advice regarding the language to be used in the restricted consent to extend the statute of limitations for assessment for the

[REDACTED]
(the "Taxpayer"). The current statute of limitations on assessment for tax years [REDACTED] and [REDACTED] expires on [REDACTED].

The only issue for which the restricted consent is being sought involves initial contribution payments by the Taxpayer to the [REDACTED] in the amounts of \$ [REDACTED] and \$ [REDACTED] for tax years [REDACTED] and [REDACTED], respectively.

FACTS¹

law requires selling to offer coverage. By the in light of the , many either stopped offering coverage or severely restricted the writing of . was created in with the purpose of making and insurance available to consumers.

policies are sold to by participating who act as independent contractor agents on behalf of the by performing services.

Each that elected to participate in the during its first year of operations was required to contribute to the initial operating capital in an amount equal to \$ multiplied by the percentage representing the 's market share as of . The initial contributions by the to the are nonrefundable.

In , the Taxpayer agreed to participate in the and began transferring its coverage to the starting with that were being renewed as of , as well as new being written as of the same effective date. By , the transfer of to the was complete.

To participate in the , the Taxpayer made an initial contribution to the in the amount of \$ in December of . The remaining initial contribution was paid in equal installments of \$ commencing . Thus, installment payments totaling \$ were made in tax year and installment payments totaling \$ were made in tax year .²

¹ Our understanding of the facts of this case is limited to the information that you have provided in this case. We have not undertaken any independent investigation of the facts of this case. If the facts known to us are incorrect or incomplete in any material respect, you should not rely on this advice, but instead, should contact our office immediately.

² This information is from Taxpayer's response to Information Document Request #70. We note that payments of \$ total \$ (not \$), while payments of \$ total \$ (not \$).

The only issue for which the restricted consent is being sought involves the proper treatment of these initial contribution payments to the [REDACTED]--that is, whether the payments are deductible as ordinary and necessary business expense under I.R.C. § 832(c)(1), or instead, are capital expenditures under I.R.C. § 263.

RECOMMENDATION

We recommend that you use the following language on the restricted consent, Form 872-A. The language should be placed in the space between the printed text of the form and the first signature line. However, if space is limited, the restricted language can be placed on an attachment, in which case, "SEE ATTACHED STATEMENT" should be placed in the space between the printed text and the first signature line of the restricted consent form.

The restricted language on the Form 872-A should read as follows:

The amount of any deficiency, set off, penalty, addition to tax and/or interest assessment shall be limited to that resulting from any adjustment to the taxpayer's treatment and/or reporting of, for Federal income tax purposes, the payments to the [REDACTED] [REDACTED] on Form 1120-PC (including all schedules and attachments thereto) for tax years [REDACTED] and [REDACTED], including any consequential changes to other items based on such adjustment(s).

As used herein, the term "adjustment" means any change or changes to said item(s) whether reported or not reported on the return. The change can be in amount, taxable status, allocation, character, etc.

As used herein, the term "consequential changes" means any direct or indirect effect.

A footnote limiting the application of I.R.C. § 6511(c) should be added to the consent stating, "The provisions of section 6511(c) of the Internal Revenue Code are limited to any refund or credit resulting from adjustment(s) for which the period for assessment is extended under this agreement."

This advice has been coordinated with the Office of Chief Counsel in Washington, D.C. and the ISP counsel for [REDACTED] industry.

Please call Jenny A. Moon at (949)360-2689 if you have any questions.

Attachments: copies of relevant portions of Taxpayer's [REDACTED] and [REDACTED] Forms 1120-PC.